HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C) No. 753 of 2007

APPELLANT NON-APPLICANT NO.2	Smt. Shakuntala, W/o Dinesh Choubey, aged about 46 years, R/o Bajrangpur Nawagaon, Town, Tah. & Distt. Rajnandgaon (C.G.)
	Versus
RESPONDENTS APPLICANTS	1. Smt. Jantri Bai, W/o Bhuwanlal Sahu, aged about 42 years
	2. Lukeshwar, S/o Bhuwanlal Sahu, aged about 19 years
	3. Sohanlal, S/o Bhuwanlal Sahu, aged about 16 years Respondent No. 3 is minor through his natural guardian and mother Smt.Jantri Bai W/o Bhuwanlal Sahu, all are residents of Parrikhurd, Tah. & Distt. Rajnandgaon (C.G.)
RESONDENTS NON-APPLICANTS	4. Branch Manager, The Oriental Insurance Company Ltd., Kamptee Line, Rajnandgaon (C.G.)
	5. Dindayal, S/o Kalanath Sahu, aged about 60 years, R/o Chhuikhadan, Tah. & Distt. Rajnandgaon, Driver and owner of vhicle Motorcycle Suzuki C.G. 08 ZE 0925.
	6. Branch Manager, The National Insurance Co. Ltd., Kamptee Line, Rajnandgaon (C.G.)
	7. Srawan Kumar @ Chhotu S/o Kanhaiyalal Gond, aged about 27 years, Driver by occupation, R/o Basula, Tah. & Distt. Rajnandgaon (C.G.)

Appeal UnderSection 173 of the Motor Vehicles Act,1988

Present: Shri V.K. Sharma, counsel for the appellant.

ORAL ORDER
(Passed on 7th December,2007)

Hard on admission.

2. This is an appeal filed by owner of Truck No.CG 08 Z.C. 0410 which had collided with Motor Cycle driven by the deceased and arises out of an award dated 11-05-2007 passed in Claim Case No.106/2004 by the First Additional Motor Accidents Claims Tribunal, Rajnandgaon (hereinafter referred to as "the MACT") whereby after exonerating the Insurance Company liability was fastened on the appellant/owner to pay compensation of Rs.2,01,500/- to the legal representatives of the deceased Bhuwanlal Sahu.

3. Learned counsel for the appellant has urged the following grounds:

(a) Though the policy issued by the insurance company commenced from 0.00 hours on 25-05-2004, the premium was received by the insurance company on 24.05.2004.

(b) Since there was contributory negligence on the part of the deceased, the compensation ought to have been apportioned.

No other ground was urged. Quantum of compensation also not disputed in this appeal.

4. Learned counsel for the appellant has placed reliance on **New India Assurance Co. Ltd. vs. Rula and Ors. 2001 (1) C.G.L.J. 201, Oriental Insurance Co. Ltd. vs. Sunder Singh and others 2007 ACJ 1297** and **Oriental Insurance Co. Ltd. vs. Sheela Bai and others, 2007 ACJ 798** in support of his arguments.

5. It was not disputed by the learned counsel for the appellant that the accident occurred on 24-05-2004 at 10.00 A.M. It was also not disputed that the receipt of premium dated 24-05-2004 was not exhibited in evidence.

6. A perusal of the receipt filed by the appellant/owner along with this appeal shows that it is an official computer generated receipt which could have been issued only during office hours and not at the time of accident i.e.,10.00 A.M. The policy Ex. D-1 clearly mentions that it commences from 0.00 hours on 25-05-2004. Thus the MACT was fully justified in exonerating the insurance company since the offending vehicle was not insured at the time of accident. The case law cited by learned counsel for the appellant is clearly distinguishable on facts as well as on law and does not help the appellant in any manner.

7. As regards the ground of contributory negligence is concerned, the driver of the offending vehicle was not examined by the appellant before the MACT. Owner of the truck also did not enter the witness box. Eye witness Jagdeo Ram (AW/2) denied that the deceased contributed in any manner to the accident. In this manner no evidence whatsoever was led before the MACT by the appellant in support of its plea of contributory negligence. In this view of the matter, the MACT was fully justified in awarding compensation against the appellant/owner.

8. In the result, the appeal being devoid of merit is dismissed at the stage of admission.

9. Consequently, I.A. No.1 which is an application for issuance of appropriate direction and stay against the award passed on 11-05-2007 also stands dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge